

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of ELIZABETH GRACE KOLMAN  
and ROY WILLIAM KOLMAN, Minors.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ROY WILLIAM KOLMAN,

Respondent-Appellant,

and

THERESA LYNN PROUGH and TONY M.  
HOBBS,

Respondents.

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In the Matter of ELIZABETH GRACE KOLMAN,  
ROY WILLIAM KOLMAN, AMANDA LYNN  
PROUGH, and TONY ALLEN PROUGH, Minors.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

THERESA LYNN PROUGH,

Respondent-Appellant,

and

ROY WILLIAM KOLMAN and TONY M.  
HOBBS,

UNPUBLISHED  
November 29, 2005

No. 260723  
Wayne Circuit Court  
Family Division  
LC No. 02-406523-NA

No. 260724  
Wayne Circuit Court  
Family Division  
LC No. 02-406523-NA

Respondents.

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Before: Whitbeck, C.J., and Saad and O'Connell, JJ.

PER CURIAM.

In these consolidated appeals, respondent Theresa Prough appeals as of right from the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i) and (g). Respondent Roy Kolman appeals as of right from the same order terminating his parental rights to Roy and Elizabeth Kolman under the same subsections. We affirm.

As is typical in termination of parental rights cases, understanding the context of the final disposition is vital to discerning its wisdom. The initial petition in this lengthy matter cited a long history of neglectful behavior by Prough, including allegations that she left the house dirty and failed to supervise the children, even to the extent that one of the children ingested her methadone. Nevertheless, the records indicate that a petition was only filed after both respondent Prough and baby Elizabeth tested positive for opiates at the time of Elizabeth's birth. According to the petition, Elizabeth was not the first child to test positive for street drugs. Both Roy and another child, Ashley, tested positive after respondent Prough gave birth to them. The petition explained that Ashley died of asphyxiation shortly after respondents Kolman and Prough took her home with them. Respondent Kolman found Ashley in a trashcan, and he claimed that Ashley had rolled off the bed into the trashcan before. A social worker verified that the petition was based on statements respondent Prough had provided, and Prough pleaded to the basic facts regarding her substance abuse rather than face trial on all the other issues. Nevertheless, the facts underlying the petition were verified at various times during the referee's proceedings. After Elizabeth tested positive for drugs, officials took her directly from the hospital and placed her in foster care.

The evidence strongly suggested that respondent Prough continued to abuse cocaine and heroin during the entire life of this action, which spanned thirty-two months. Although she attended two inpatient treatment programs, she did not follow through with aftercare, and the only drug screen she complied with was positive for cocaine and heroin. Respondent Prough also neglected to visit the children for two periods of three to eight weeks at a time, and her failure to appear when scheduled caused Roy considerable anxiety. She failed to demonstrate adequate housing, stating at various times that she lived in her car or roomed with a prostitute. She relied on others, most notably respondent Kolman, for transportation to and from court, and she failed to attend the referee's recommendation hearing. Petitioner presented clear and convincing evidence that subsections (c)(i) and (g) applied to respondent Prough, so the trial court did not clearly err when it found that petitioner met its burden of proof. MCR 3.977(J); *In re Trejo*, 462 Mich 341, 343; 612 NW2d 407 (2000).

Further, the evidence did not show that termination of respondent Prough's parental rights was clearly contrary to the children's best interests. MCL 712A.19b(5); MCR 3.977(J); *Trejo*, *supra* at 353. Although there was a bond between respondent Prough and at least Amanda

and Roy, she never had stable housing or employment and continued to abuse drugs. In contrast, the evidence suggested that the children had adjusted well to their foster parents' homes.

Regarding respondent Kolman, he continually demonstrated a deep-seated relationship with respondent Prough that supplanted his concern for the best interests of his children. At the first jurisdictional proceeding, the trial court noted that the allegations against respondent Kolman stemmed primarily from his failure to protect the children from their mother's abusive and neglectful conduct. According to their own testimony, respondents had been a couple for roughly ten years at the time of the first hearing, and in that time, respondent Kolman failed to prevent respondent Prough from taking heroin during three of her pregnancies with his children. He failed to protect Ashley from the neglect that led to her death. Even after the children were taken in early February 2002 following respondent Prough's and Elizabeth's positive test results, respondent Kolman admitted that he continued to cohabitate with respondent Prough until January 2003.

In the beginning, respondents Prough and Kolman did not have separate visitations and their planning was oriented toward reuniting the whole family. But eventually it became evident that respondent Prough's eclectic lifestyle, entrenched drug abuse, and trouble with authorities rendered total reunification impossible, and respondent Kolman began disassociating himself from her. Nevertheless, after he claims that he and respondent Prough split up, social workers continued to note that respondent Prough called them from his home, and she continued to drive his car. When the origin of the phone calls were mentioned in court, respondent Prough began calling caseworkers from a cellular phone listed in the name of respondent Kolman's father. Respondent Kolman put together a "care package" for respondent Prough, and whenever her parents needed to reach her, respondent Kolman found her for them.

On a surprise visit, a caseworker found respondent Prough sleeping in respondent Kolman's bedroom in October 2004. By his own admission, the bedroom also contained several bags' worth of respondent Prough's clothing. Respondent Kolman tried to explain the situation, but the referee rejected the explanation and further found that respondent Kolman was not being forthright about the particular situation and, more importantly, the extent of the underlying relationship. We rely on the trial court's opportunity to assess a witness's credibility. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). These facts represent clear and convincing evidence that respondent Kolman maintained an ongoing and potentially destructive relationship with respondent Prough. This relationship had previously prevented respondent Kolman from protecting his children from their mother's abuse and neglect, which was the reason for the original adjudication. MCL 712A.19b(3)(b)(ii), (g), and (j). He had nearly three years to correct the problem after the children were removed, and nearly two years after he claimed to have completely ended their romantic involvement. Therefore, petitioner presented sufficient evidence that respondent Kolman would not correct these issues within a reasonable time. MCL 712A.19b(c)(i).

Further, the trial court did not clearly err when it failed to find that termination of respondent Kolman's rights was not clearly contrary to the children's best interests. MCL 712A.19b(5); *Trejo, supra*. At the time of the final disposition, Elizabeth had spent her entire life, nearly three years, in foster care. A caseworker testified that during one of respondent Kolman's visits he did not engage Elizabeth at all, and that Elizabeth showed no signs of distress when they parted. Although respondent Kolman's relationship with his son Roy was

significantly stronger, the evidence reflected that Roy was adapting to his new home. Moreover, Roy demonstrated a particular sensitivity to his mother's erratic behavior, so respondent Kolman's failure to sever ties with her would detrimentally affect his son if respondent Kolman's rights were not terminated. Therefore, the trial court did not clearly err when it found that termination of respondent Kolman's parental rights was not clearly contrary to the Roy's best interests.

Affirmed.

/s/ William C. Whitbeck  
/s/ Henry William Saad  
/s/ Peter D. O'Connell